

MAIL TO:

STATE OF UTAH
 DIVISION OF PURCHASING
 3150 STATE OFFICE BUILDING, CAPITOL HILL
 P.O. BOX 141061
 SALT LAKE CITY, UTAH 84114-1061
 TELEPHONE (801) 538-3026
www.purchasing.utah.gov

Invitation to BidSolicitation Number: **RC6903**Due Date: **11/16/05 at 2:00 PM**

Date Sent: October 20, 2005

State Cooperative ContractGoods and services to be purchased: **CHEESE AND BUTTER****Please complete**

Company Name		Federal Tax Identification Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)	Email Address	
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)		Days Required for Delivery After Receipt of Order (see attached for any required minimums)	
Brand/Trade Name		Price Guarantee Period (see attached specifications for any required minimums)	
Minimum Order		Company's Internet Web Address	
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes_____ No_____. If no, enter where produced, etc._____</p>			
Offeror's Authorized Representative's Signature		Print or type name and title	Date
State of Utah Division of Purchasing Approval Douglas G. Richins, Director		Date	Contract Number

**STATE OF UTAH
DIVISION OF PURCHASING**

Invitation to Bid

Solicitation Number: RC6903

Due Date: 11/16/05@2:00PM

Vendor Name:

STATE COOPERATIVE CONTRACT FOR CHEESE AND BUTTER PER ATTACHED LIST.

THIS WILL BE A TWO (2) YEAR CONTRACT WITH THREE (3) RENEWAL OPTIONS. (Total of five (5) years possible.)

Please contact Rosalie Nance with any questions at 801-538-3145.

Changes or modifications to this bid:

Any changes or modifications to this solicitation will only be accomplished in written addendum sent from the division of purchasing. Any other form is not binding. Bidders submitting a bid on any information other than which is contained in this solicitation document, or any addendum thereto, do so at their own risk.

Ship To: VARIOUS LOCATIONS

INVITATION TO BID - INSTRUCTION AND GENERAL PROVISIONS

1. BID PREPARATION: (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing quotation. (c) Unit price will govern, if there is an error in the extension. (d) Delivery time is critical and must be adhered to as specified. (e) Wherever in this document an item is defined by using a trade name of a manufacturer and/or model number, it is intended that the words, "or equivalent" apply. "Or equivalent" means any other brand that is equal in use, quality, economy and performance to the brand listed as determined by the Division of Purchasing & General Services (DIVISION). If the vendor lists a trade name and/or catalog number in the bid, the DIVISION will assume the item meets the specifications unless the bid clearly states it is an alternate, and describes specifically how it differs from the item specified. All bids must include complete manufacturer's descriptive literature if quoting an equivalent product. All products are to be of new, unused condition, unless otherwise requested in this solicitation. (f) By signing the bid the vendor certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices quoted are correct. (g) This bid may not be withdrawn for a period of 60 days from bid due date.

2. SUBMITTING THE BID: (a) The bid must be signed in ink, sealed in a properly addressed envelope, and delivered to the DIVISION OF PURCHASING (DIVISION), 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 by the "Due Date and Time." **The "Bid Number" and "Due Date" must appear on the outside of the envelope.** (b) Bids, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section R33-3-109. (c) **Your bid will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of bids to DIVISION will not be considered.** (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the bid for consideration and approval by the DIVISION. Upon award of the contract, the shipping terms will be F.O.B. Destination with all transportation and handling charges paid by the Contractor, unless otherwise specified by the DIVISION.

3. SOLICITATION AMENDMENTS: All changes to this solicitation will be made through written addendum only. Bidders are cautioned not to consider verbal modifications.

4. PROPRIETARY INFORMATION: Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for nondisclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any bid will not to be considered proprietary. Bids submitted may to be reviewed and evaluated by any persons at the discretion of the state.

5. SAMPLES: Samples of item(s) specified in this bid, when required by DIVISION, must to be furnished free of charge to DIVISION. Any item not destroyed by tests may, upon request made at the time the sample is furnished, to be returned at the bidder's expense.

6. WARRANTY: The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

7. DIVISION APPROVAL: Purchase orders placed, or contracts written, with the state of Utah, as a result of this bid, will not to be legally binding without the written approval of the director of the DIVISION.

8. AWARD OF CONTRACT: (a) the contract will to be awarded with reasonable promptness, by written notice, to the lowest responsible bidder that meets the specifications. Consideration will to be given to the quality of the product(s) to be supplied, conformity to the specifications, the purpose for which required, delivery time required, discount terms and other criteria set forth in this invitation to bid. (b) The bids are opened publicly in the presence of one or more witnesses. the name of each bidder, and the amount of the bid is recorded. Each bid, and the record, is open to public inspection. (c) The DIVISION may accept any item or group of items, or overall low bid. the DIVISION has the right to cancel this invitation to bid at any time prior to the award of contract. (d) The DIVISION can reject any and all bids. And it can waive any informality, or technicality in any bid received, if the DIVISION believes it would serve the best interest of the State. (e) Before, or after, the award of a contract the DIVISION has the right to inspect the bidder's premises and all business records to determine the holder's ability to meet contract requirements. (f) DIVISION does not guarantee to make any purchase under awarded contract(s). Estimated quantities are for bidding purposes only, and not to be interpreted as a guarantee to purchase any amount. (g) Utah has a reciprocal preference law which will to be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56-404 and 63-56-405, Utah Code Annotated. (h) Bid tabulations and awards are posted under "Vendor Info" at www.purchasing.utah.gov. (i) Multiple contracts may be awarded if the State determines it would be in its best interest.

9. ANTI-DISCRIMINATION ACT: The bidder agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also bidder agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

10. DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

11. ENERGY CONSERVATION AND RECYCLED PRODUCTS: The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this solicitation.

12. GOVERNING LAWS AND REGULATIONS: All state purchases are subject to the Utah Procurement Code, Title 63 Chapter 56 U.C.A. 1953, as amended, and the Procurement Regulations as adopted by the Utah State Procurement Policy Board. These are available on the Internet at www.purchasing.utah.gov.

(Revision 5 Oct 2005 - ITB Instructions)

**State Cooperative Contract – Cheese & Butter
Specifications, Terms and Conditions
Bid # RC6903**

I. GENERAL INFORMATION

1. INTRODUCTION:

The State of Utah, Division of Purchasing & General Services is requesting bids for the future purchases of Cheese & Butter products. All specifications and instructions are in addition to the Standard Terms and Conditions (attached).

2. PURPOSE:

The purpose of this Invitation to Bid (herein ITB) is to establish a state cooperative contract for the use of all State of Utah agencies and its political subdivisions (i.e. colleges, school districts, counties, cities, etc.). This solicitation may result in the award of multiple contracts.

State agencies with requirements that are not met by the contracts resulting from this ITB will meet their needs through the competitive solicitation process on an as-needed basis.

3. PROCUREMENT MANAGER (ALSO CONTRACT MANAGER):

The Procurement Manager (and subsequent Contract Manager) designated by the State of Utah, Division of Purchasing & General Services is:

Rosalie Nance
State of Utah
Division of Purchasing & General Services
Room 3150 State Office Building, Capitol Hill
Salt Lake City UT 84114-1061

rnance@utah.gov
Voice: (801) 538-3145 Fax: (801) 538-3882

4. RELEVANT WEBSITE:

The website for the State of Utah, Division of Purchasing & General Services, which includes procurement related information for the State of Utah, and all current solicitations, with each complete solicitation and any addenda, in PDF format is: <http://www.purchasing.utah.gov> This site will also host the contract information for the contract that results from this ITB.

5. BID DUE DATE, TIME AND LOCATION:

One (1) hard copy of bid is due Wednesday, November 16, 2005 and must be received at the following location:

State of Utah
Division of Purchasing & General Services

Room 3150, State Office Building, Capitol Hill
Salt Lake City UT 84114-1061

Late bids will not be considered. Bids will not be accepted via fax.

If you plan to hand deliver your bid, please note: Due to construction on Capitol Hill, it is difficult to get into the building and into the Purchasing Office. You will need to park on the west side of the State Office Building and enter the building on the south side. You will need to bring picture identification. Please allow sufficient time.

Bid must be sealed and labeled on the outside of the package to clearly indicate the bid number, due date and time.

Bidders may submit bid any time prior to the above stated deadline. The formal bid opening will be held in the Division of Purchasing conference room at 2:00 p.m. All bidders are invited to attend, but attendance is not required.

6. HISTORICAL USAGE DATA:

The total volume in the last year was \$238,788. This volume is from State Agencies and Political Subdivisions such as cities and counties. This dollar volume is not a guarantee of future volume performance.

7. GOVERNING LAWS AND REGULATIONS:

This procurement is conducted by the State of Utah, Division of Purchasing & General Services, in accordance with the Utah Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33). These are available at the Internet website for the State of Utah's Division of Purchasing & General Services (see item 4 for address).

II. AWARD OF CONTRACT AND CONTRACT TERMS

1. **AWARD OF CONTRACT:**
Contracts will be awarded to the lowest bidding responsive and responsible bidder(s). The state reserves the right to cancel any contract awarded as a result of this solicitation when it is in the best interest of the state.
2. **CONTRACT TERM:**
The contract term is two (2) years. Contracts are renewable, at the State's option, on an annual basis, up to a maximum of three total renewal years (contract potential is five years, including all renewal options).
3. **PRICE GUARANTEE:**
All pricing of Cheese and Butter must be guaranteed for at least 30 days from the beginning of the contract. Any request for a price adjustment must include sufficient documentation supporting the request. Any price adjustment for butter must be based on the Chicago Mercantile Exchange Market. Requested price adjustments may not occur more often than monthly. Any adjustment or amendment to the contract will not be effective unless approved by the State Director of Purchasing.
4. **PRICE REDUCTIONS:**
It is understood and agreed that in the event of a reduction in price, the State of Utah will be given the full benefit of such decrease.
5. **CANCELLATION OF PROCUREMENT:**
This bid may be canceled at any time when the State of Utah, Division of Purchasing & General Services determines such action to be in the best interest of the State.
6. **RIGHT TO PUBLISH:**
Throughout the duration of this procurement process and contract term, potential contractors, and subsequently contractors must secure from the contract manager prior approval to release any information that pertains to the potential work or activities covered by this procurement or contracts. Failure to adhere to this requirement may result in disqualification of the vendor's bid or termination of the contract for cause.
7. **MANDATORY USAGE REPORT REQUIREMENT (Attachment A):**
One of the primary goals in administering this contract is to keep accurate records regarding its actual value. Consequently, the contractor will be required to provide quarterly usage reports to the Division of Purchasing. All reports must be submitted, using our template, in electronic format via e-mail to both the contract manager and to salesreports@utah.gov.

After contract award, you will be provided by e-mail an **Excel** spreadsheet template that includes instructions, sample data and all information that must be provided.

Quarterly Report Submission

Quarterly reports must coincide with the quarters in the State of Utah fiscal year as outlined below:

Quarter #1: July 1 through September 30, due annually by October 30.

Quarter #2: October 1 through December 31, due annually by January 30.

Quarter #3: January 1 through March 31, due annually by April 30.

Quarter #4: April 1 through June 30, due annually by July 30.

Bidders shall identify below the name of the individual responsible for preparation of the mandatory usage reports:

NAME:	
MAILING ADDRESS:	
TELEPHONE #:	
FAX NUMBER:	
EMAIL ADDRESS:	

III. SPECIFICATIONS AND REQUIREMENTS

This is a statewide contract for cheese and butter. All items must meet USDA standards and must be delivered in a refrigerated truck.

Bid # RC6903

Due Date: November 16, 2005

Agent: Rosalie Nance

Description: Cheese and Butter

Bidder Name

	Product Description	Brand	Packaging/Size	Price	usage
1.	Provolone Cheese		3/12#		10
2.	Pepper Jack		6/5#		35
3.	American Sliced 120 ct		4/5#		1,075
4.	Loaf American		6/5#		82
5.	Swiss Sliced 120 ct		4/5#		740
6.	Swiss Sliced 160 ct		4/5#		
7.	American Sliced 96 ct		4/5#		1,700
8.	Mild Cheddar Shredded		4/5#		1,360
9.	Mozzarella Shredded		4/5#		540
10.	IWS American		12/12oz		1,240
11.	Shaker Parmesan		12/1#		28
12.	Grated Parmesan		6/5#		100
13.	Blue Crumbled		3/5#		
14.	Cream Cheese bulk		30#		60
15.	Cream Cheese		10/3#		45
16.	String Cheese		160/1oz		25
17.	Solid Butter		36/1#		40
18.	Butter Redi 90		15# Cut reddies		
19.	Butter Cont.		17 #59 Cont.		

ATTACHMENT A
Sample Reports

Summary Report

From	To	Customer	Purchase Total
		<i>Sample Data follows</i>	
07/01/04	09/30/04	Weber State University	\$12,331.00
07/01/04	09/30/04	State of Utah Purchasing	\$6,571.00
07/01/04	09/30/04	National Guard	\$4,329.00
07/01/04	09/30/04	Mosquito Abatement District - Salt Lake City	\$767.00
07/01/04	09/30/04	Ogden City	\$2,134.00
07/01/04	09/30/04	Utah County	\$48,776.00
07/01/04	09/30/04	Utah Transit Authority	\$62,374.00
07/01/04	09/30/04	Carbon County	\$1,325.00
07/01/04	09/30/04	Davis County School District	\$47,212.00
07/01/04	09/30/04	Water Conservancy District - Jordan Valley	\$357.00
07/01/04	09/30/04	State of Utah Human Services	\$6,257.00
07/01/04	09/30/04	Southern Utah University	\$1,341.00

Line Item Report

From	To	Product #	Item Description	Unit	Unit Price	Qty.	Line Total
			<i>Sample data follows</i>				
07/01/04	09/30/04		Light bulbs, 45 watt	Box/4	\$1.25	17	\$21.25
07/01/04	09/30/04		White paint, 5 gallon	Each	\$17.21	5	\$86.05
07/01/04	09/30/04		3/4" paint brush	Case/24	\$5.24	7	\$36.68
07/01/04	09/30/04		Light bulbs, 100 watt	Case/12	\$3.16	24	\$75.84
07/01/04	09/30/04		Bright white copy paper	Ream	\$4.15	15	\$62.25
07/01/04	09/30/04		Bright white copy paper	Carton	\$22.76	30	\$682.80
07/01/04	09/30/04		3/4" paint brush	Each	\$0.00	0	\$0.00
07/01/04	09/30/04		White paint, 1 gallon	Each	\$7.13	9	\$64.17

Standard Contract Terms and Conditions State of Utah, State Cooperative Contract

- 1. AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
- 2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake Co.
- 3. LAWS AND REGULATIONS:** Any and all supplies, services and equipment proposed and furnished will comply fully with all applicable Federal and State laws and regulations.
- 4. RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
- 5. CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of the STATE or participating political subdivisions to secure favorable treatment with respect to being awarded this contract.
- 6. INDEPENDENT CONTRACTOR:** Contractor will be an independent Contractor, and as such will have no authorization, express or implied to bind the STATE to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as expressly set forth herein. Compensation stated herein will be the total amount payable to the Contractor by the STATE. The Contractor will be responsible for the payment of all income tax and social security tax due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE will not be deemed to be employees or agents of the Contractor.
- 7. INDEMNITY CLAUSE:** The Contractor will release, protect, indemnify and hold the STATE and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers.
- 8. EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
- 9. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.
- 10. RENEGOTIATION OR MODIFICATIONS:** The terms of this contract will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing.
- 11. DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
- 12. TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
- 13. NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. TAXES: Proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.

15. WARRANTY: The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the STATE has relied on the Contractor's skill or judgment to consider when it advised the STATE about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the STATE has not been warned. Remedies available to the STATE include the following: The Contractor will repair or replace (at no charge to the STATE) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. PARTICIPANTS: This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the proposal.

17. POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

18. QUANTITY ESTIMATES: The STATE does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for proposing purposes only and are not to be construed as a guarantee to purchase any amount.

19. DELIVERY: The prices proposed will be the delivered price to any state agency or political subdivision. Unless otherwise specified by the State, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without transportation charges.

20. REPORTS: The Contractor will submit quarterly reports to the State Purchasing Agent showing the quantities and dollar volume of purchases by each agency and political subdivision.

21. PROMPT PAYMENT DISCOUNT: Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.

22. FIRM PRICES: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening.

23. PRICE GUARANTEE, ADJUSTMENTS: The contract pricing resulting from this proposal will be guaranteed for the period specified. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the contract will not be effective unless approved by the State Director of Purchasing. The STATE will be given the immediate benefit of any decrease in the market, or allowable discount.

24. ORDERING AND INVOICING: Orders will be placed by the using agencies directly with the Contractor. All orders will be shipped promptly in accordance with the delivery guarantee. The Contractor will then promptly submit invoices to the ordering agency. The STATE contract number and the agency ordering number will appear on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the STATE will be those prices on file with the Division of Purchasing. The STATE has the right to adjust or return any invoice reflecting incorrect pricing.

25. PAYMENT: Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card" (major credit card). All payments to the Contractor will be remitted by mail unless paid by Purchasing Card.

26. MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the time set for the opening of proposals. After the time set for the opening of proposals, no proposals may be modified or withdrawn.

27. PROPOSAL PREPARATION COSTS: The STATE is not liable for any costs incurred by the offeror in proposal preparation.

28. INSPECTIONS: Goods furnished under this contract will be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or not in compliance with proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph will adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

29. PATENTS, COPYRIGHTS, ETC.: The Contractor will release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

30. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State Director of Purchasing.

31. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the STATE to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The STATE will issue a written notice of default providing a period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, the STATE may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future proposal solicitations.

32. FORCE MAJEURE: Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The STATE may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

33. HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

34. NON-COLLUSION: By signing the proposal, the offeror certifies that the proposal submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Solicitation, designed to limit independent proposing or competition.

35. PUBLIC INFORMATION: Contractor agrees that the contract will be a public document, as far as distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

36. PROCUREMENT ETHICS: The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).

37. ENERGY CONSERVATION AND RECYCLED PRODUCTS: The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this solicitation.

38. CONFLICT OF TERMS: Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. Additional State Terms and Conditions; 3. Contractor Terms and Conditions.

39. LOCAL WAREHOUSE AND DISTRIBUTION: The Contractor will maintain a reasonable amount of stock warehoused in the State of Utah for immediate or emergency shipments. Shipments are to be made in the quantities as required by the various ordering agencies. Orders for less than the minimum specified amount will have transportation charges prepaid by the Contractor and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without charge.

Revision date: 7/5/2005